IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15270 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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MEENAKSHI TRNASPORT CO.PVT.LTD

Versus

REGIONAL PROVIDENT FUND COMMISSIONER

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Appearance:

1. Special Civil Application No. 15270 of 2004

MR DIPAK R DAVE for Petitioner No. 1

MR PJ MEHTA for Respondent No. 1

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CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 11/02/2005

ORAL JUDGEMENT

Rule. Mr.P.J.Mehta, the learned advocate waives service of rule for the respondent No.1.

At the request of Mr.Dipak R. Dave, the learned advocate for the petitioner and with the consent of the learned advocate for the respondents, the matter is taken up for final disposal today.

.RS 2.

#. The present petitioner - Meenakshi Transport Co. Pvt. Ltd. is before this Court being aggrieved of an order dated 8th September, 2004, 18th October, 2004 and 24th October, 2004 passed by the respondent Commissioner. By order dated 8th September, 2004, the respondent i.e. Assistant Provident Fund Commissioner has ordered the petitioner company to pay the provident fund dues from 21st June, 2000. Next follows is letter dated 18th October, 2004 whereby the petitioner was asked to start compliance to avoid legal action, as well as in the larger interest of employees of establishment. Lastly by order dated 24th October, 2004, the petitioner was intimated that "In case we do not get any response from you within a week, we would presume our records to be correct and your account would be flagged as 'delinquent account' for further compliance action under Section 7-A of the Act."

#. The learned advocate appearing for the petitioner submitted that one of the employees of the petitioner viz. Mr.G.B.Lalwani was ousted from service, which agitated him to make number of complaints in various Government Departments, including the Provident Fund Department also. The authorities, on application of said Shri Lalwani, inquired into the matter in detail. At that time said Shri Lalwani was also allowed to participate in the proceedings. The learned advocate submitted that by letter dated 11th June, 2001 the petitioner establishment and said Shri Lalwani, were conveyed that "the complainant has not appeared on the second date inspite of notice sent to him. The Enforcement Officer has reported that employment strength never exceeded 19 in two establishments and the 3rd establishment is not to be considered for clubbing. Since it has been experienced that in Baroda the employees will become enemy of an employer the moment he is ousted from the services. This case is also an example of the same type. When, the complainant was in service he never bothered for his social security and when he is not in service he has taken all steps to put he employer in trouble by filing complaints before several authorities. Hence the complainant is acting with an aim to take revenge from the employer. I have formed this opinion as he has not given any concrete

document and the mere insurance sheet is not a proof of employment of 20 persons on a single day. When the Enforcement Officer has verified the records and the employer has given details of employees the opinion has to be formed that the complaint has no merit at all. Hence, the matter is dropped. The parties may be informed accordingly."

#. The learned advocate for the petitioner submitted that thereafter once again, Shri Lalwani made an application and the authorities while acting on that application without giving further opportunity to the petitioner and without having any additional material, for coming to a different conclusion has passed the orders under challenge.

#. The learned advocate appearing for the respondents has relied upon the Affidavit-in-reply filed by Shri M.H.Shukla, A.P.F.C. (Legal), Gujarat and submitted that it is not true that the respondents passed order dated 8th September, 2004 without affording an opportunity of hearing under Section-7-A of the Act. He further submitted that it is for the establishment to submit relevant records before the respondent Commissioner to satisfy that there is no necessity for initiating a fresh inquiry under Section 7-A of the Act and passing a order.

#. The learned advocate for the respondents submitted that the authorities have taken into consideration the list of staff working in petitioner establishment on the basis of schedule to a policy, issued by the New India Assurance Co. Ltd. on 11th October, 2000, wherein as many as 29 employees are stated to have been serving with the petitioner establishment.

#. The fact that this very document was not only available at the time of first inquiry but was taken into consideration by the Officer concerned had recorded the findings mentioned hereinabove, cannot be taken into consideration by the respondents to come to a different conclusion.

#. In view of the fact that the respondent is not able to point out any additional material, which has come to their possession or knowledge, for coming to a different conclusion. Respondents cannot be allowed to hold a fresh inquiry and come to a different conclusion in absence of any new material.

In view of the aforesaid discussion, orders under challenge are quashed and set aside.

Rule is made absolute with no order as to costs.

Date : 11.2.2005 [ Ravi R. Tripathi, J.]

#kailash#